IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9176 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MATHURBHAI PUNJABHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9176 of 2003

MR CL SONI for Petitioner No. 1

Mr.K.C.Shah, Addl.PP for Respondent No. 1

MR DC SEJPAL for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 08/12/2003

ORAL JUDGEMENT

Rule. Heard Mr.Soni, Ld.advocate for the petitioner, Ld.APP-Mr.K.C.Shah for respondent-State and Mr.Sejpal for respondent Nos 2 & 3.

2. The present petition arises from the order, dated 6.9.03 passed by the Ld.Sessions Judge in Cri.M.A.No.177/03 whereby the respondent Nos 2 & 3 are released on bail.

3. Having heard the learned counsel for the parties, it appears that so far as taking decision for releasing respondent Nos 2 & 3 on bail is concerned, it can not be said that the discretion exercised by the Ld.Sessions Judge is so perverse which would call for interference by this court for cancellation of bail on the basis of primafacie case or otherwise. I would have considered the matter for recording of reasons for such purpose, however, Mr.Soni and Mr.Sejpal have not invited detailed reasons on the question of primafacie case. Therefore, I find it proper to leave the matter at that stage, but, suffice it to say that considering the facts and circumstances of the case, on the question of releasing respondent Nos 2 & 3 on bail, it can not be said that the discretion exercised by the learned Sessions Judge is so perverse which would attract the powers of this courtfor cancelling the decision for bail, save and except as stated hereinafter.

4. However, so far as the condition imposed by the learned Sessions Judge is concerned, there is considerable force in the contention of Mr.Soni that even though the investigation is going on and chargesheet is not filed, the condition is not imposed by the learned Sessions Judge with a view to see that there is free and fair investigation,more particularly, when respondent Nos 2, 3 and the original complainant are close relatives. I would have recorded reasons for modifying the condition imposed by the learned Sessions Judge, however, Mr.Sejpal for respondent Nos 2 & 3 has submitted that the respondent Nos 2 & 3 would abide by any modification in the condition which this court may find it proper with a view to see that the investigation is not hampered or any witness is not tampered with. Mr.Sejpal submitted that the respondent No.2 is aged about 70 years and he has vision problem and the court may consider the said aspects while modifying the condition.

5. In view of the aforesaid submissions made by the learned counsel for respondent Nos 2 & 3, I find it proper not to record further reasons, but suffice it to

say that the learned Sessions Judge ought to have put condition atleast on respondent No.3 not to enter the limits of village Nadala for a reasonable time so that the investigation can be completed in a free and fair atmosphere and the trial also can be conducted within reasonable period without there being any apprehension on the part of any witness. Since the respondent No.2 is aged about 70 years a lenient view can be taken. However, so far as respondent No.3 is concerned, I find it proper to modify the condition so that he can not enter the revenue limits of village NADALA for a period of one year from 18/12/03 or such intimation by the IO for such purpose.

6. Considering the above, the present petition is partly allowed to the extent that the order passed by the Ld.Sessions Judge, dated 6/9/03 shall continue with the modification that the respondent No.3 shall not enter the revenue limits of village NADALA for a period of one year from 18.12.2003.

7. Rule is made absolute accordingly to the aforesaid extent.

8.12.2003 (JAYANT PATEL,J)